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**STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY, et al.

Petitioners,

v.

SHORELINES HEARINGS BOARD, et al.,

Respondents.

Nos. 01-2-01790-7, 01-2-01792-3,
01-2-01793-1, and 01-2-01797-4

CONSOLIDATED

**STIPULATION OF PARTIES AND
STIPULATION FOR DISMISSAL**

The parties to the above captioned litigation, through their counsel, hereby stipulate to the following agreement and basis for voluntary dismissal of this litigation. This stipulation is effective upon filing with the court and binding on all parties making this stipulation.

Basis for Stipulation.

This stipulation arises out of litigation pending in the above captioned case of *Department of Ecology et al v. Shoreline Hearings Board et al*, Thurston County Superior Court Nos. 01-2-01790-7, 01-2-01792-3, 01-2-01793-1, and 01-2-01797-4. That litigation concerns judicial review of a decision by the Shoreline Hearings Board, which reviewed Ecology's rules adopting guidelines for Master Programs under the Shoreline Management Act.

The undersigned parties recognize that they have raised numerous arguments and issues before this court. The parties have chosen to end their litigation rather than proceed

1 with the costs and risks associated with litigation. This stipulation therefore provides for a
2 voluntary dismissal of all claims and this case, when all conditions identified below have
3 occurred. If the dismissal order contemplated by this stipulation is entered, the parties hereby
4 recognize that this Court has not addressed any issues in this case and has not issued any
5 rulings on the subject matter.

6 These terms and conditions are intended to be an agreement between the parties. The
7 parties acknowledge that this agreement is based on consideration where each party has
8 foregone rights to pursue issues and arguments and claims in the above captioned proceeding.

9 **Stipulations**

10 **1. Ecology Shall Propose Shoreline Management Act Guidelines for Adoption as** 11 **Rules.**

12 1.1 Representatives of the parties have engaged in mediation to reach agreements
13 concerning appropriate Shoreline Management Act (“SMA”) guideline rules that could be
14 proposed for adoption by the Department of Ecology (“Ecology”). As a result of those
15 mediated meetings, the parties have agreed that draft SMA guideline rules (**Attachment A**)
16 can be and should be proposed for adoption by the Department of Ecology pursuant to its
17 rulemaking authority under the SMA.

18 1.2 Ecology agrees that it will initiate rulemaking processes and propose SMA
19 guideline rules identified in **Attachment A**. Ecology will proceed as soon as practical to
20 initiate proposal of these rules and compliance with all relevant and applicable procedural
21 requirements associated with adoption of rules under Washington law.

22 1.3 The remaining parties agree that they support adoption of rules substantially in
23 the form and substance of **Attachment A** and using the processes identified in the timeline for
24 rulemaking and rule adoption included in **Attachment B**. These parties agree that they will
25 not oppose adoption of rules substantially in the form and substance of Attachment A and that
26 they will provide appropriate support in the rulemaking processes identified in **Attachment B**.

1 That support during rulemaking processes may be commensurate with the resources of the
2 party to evaluate and write comment letters or provide appropriate support. The parties
3 recognize that they will work in good faith during the rulemaking process to consider
4 mutually agreeable positions on matters that may arise in the rulemaking process.

5 1.4 **Rule of construction and intent.** The parties recognize that this stipulation
6 does not obligate or require Ecology to adopt any particular rules. The parties recognize their
7 mediation, discussion, and review of possible regulatory approaches for SMA guidelines
8 should be construed at all times to be consistent with the Washington Administrative
9 Procedures Act, the Shoreline Management Act, and any other applicable law. If any
10 requirement or implication of this agreement is inconsistent with law, the parties agree that
11 they will construe this agreement to avoid such inconsistency.

12 **2. Parties Will Voluntarily Dismiss Thurston County Superior Court Litigation.**

13 2.1 Within 30 days of a filing of a CR 103 adopting new shoreline guideline rules,
14 or an Ecology order or rule expressly repealing the shoreline guideline rules that were the
15 subject of this litigation, the parties stipulate to an order voluntarily dismissing *Department of*
16 *Ecology et al v. Shoreline Hearings Board et al*, Thurston County Superior Court Nos. 01-2-
17 01790-7, 01-2-01792-3, 01-2-01793-1, and 01-2-01797-4 in a stipulated order of the form
18 **Attachment C.** Pending such events, the parties will mutually move for and stipulate to any
19 necessary orders to stay proceedings in that case. In the event that Ecology does not file a CR
20 103 adopting new shoreline guideline rules or repeal the shoreline guideline rules that were
21 the subject of this litigation by three months after the intended adoption date shown in
22 Attachment B, and Ecology does not have shoreline guideline rules that are subject to a
23 pending proposal to adopt under a CR 102 filing, then the parties will meet and determine if
24 this stipulation for dismissal will be otherwise accomplished. After such meeting, any party
25 may by written notice terminate their agreement to stipulate to dismissal and the parties will
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1 then have all rights to seek any relief that might be available in this case, or to oppose such
2 relief.

3 2.2 If any party believes that another party is in violation of this stipulation and
4 objects to such perceived violation, then the party may provide written notice of the possible
5 violation and their concerns, and shall provide at least thirty days to cure the violation. Such
6 written notice and cure period shall be a mandatory requirement before any party may seek to
7 avoid or rescind this stipulation. In the event that the violation is not cured, the party may
8 seek a declaration of the violation of this stipulation. In no event shall this stipulation be the
9 basis for any party to pay damages or costs to another party.

10 2.3 If after dismissal of this case it becomes necessary to enforce this stipulation, a
11 party may seek to enforce this in Thurston County Superior Court and seek declarations or
12 injunctions as remedies consistent with the stipulation. This provision does not preclude
13 raising the stipulation in other forums including the Shoreline Hearings Board, if material and
14 relevant.

15 2.4 The parties agree that the effect of a voluntary dismissal of this litigation is that
16 the superior court has not ruled on any issues that were raised by or which might have been
17 argued by the parties in this case. However, each party reserves the right to make any
18 arguments against or in favor of the SHB decisions in any future forum and may contend that
19 the SHB decision is material and relevant in such forums, or not, as the party sees fit.

20 **3. Parties Will Not Challenge Future SMA Guideline Rules If Consistent With Draft**
21 **Rules Identified for Proposal.**

22 3.1 In the event that Ecology adopts SMA guidelines substantially in the form and
23 substance supported for proposal in **Attachment A**, the parties agree that they will not engage
24 in an administrative challenge to the guidelines under chapter 90.58 RCW nor a judicial
25 challenge of such guidelines under RCW 34.05.570. However, if Ecology does not provide (1)
26 a legally adequate SBEIS, and (2) materials sufficient for compliance with the requirements of

1 RCW 34.05.328, including, but not limited to, a cost benefit evaluation, determination of least
2 burdensome alternative, and implementation plan when the rules are proposed, or (3) if
3 Ecology fails to allow comment on either the SBEIS or cost benefit evaluations during the
4 rulemaking notice and comment processes, then parties reserve the right to raise challenges to
5 the rules based on these issues. If Ecology adopts SMA guidelines that are not substantially in
6 the form and substance of **Attachment A**, the parties may challenge such rules. During
7 rulemaking processes, any or all parties may work together to reach further agreements to
8 identify comments and proposals for changes to proposed rules that they do not consider to be
9 “substantial” changes from **Attachment A** and which parties agree that Ecology can or should
10 make.

11 3.2 The parties recognize that Ecology may in the future consider conditions that the
12 federal government places on funding or that the federal government proposes or demands in
13 the course of other legal processes, such as ESA processes or consultations. Ecology will
14 identify any plans or approaches for working with federal agencies as part of rulemaking
15 documents, and contemplates doing this as part of the implementation plan described in RCW
16 34.05.328. All parties to this stipulation may have an interest in any actions or inactions that
17 Ecology may take in response to such federal conditions, proposals, or demands. Therefore,
18 all parties reserve any and all rights the party may have to seek judicial review or to otherwise
19 challenge actions that Ecology might take in response to any conditions, proposals, or
20 demands that the federal government may place on federal funding, or that the federal
21 government identifies or develops in the course of any other legal processes including ESA
22 processes or consultations.

23 3.3 The parties agree that they reserve all rights to participate in, comment on, or
24 seek administrative or judicial review of any future shoreline master program or amendment
25 of a master program, or any future SMA guidelines or amendments of the guidelines that may
26 be proposed by Ecology.

1 **4. Agreement to Support Proposals for Legislative Funding and Actions and**
2 **Contingency on Legislation to Enable Settlement**

3 4.1 The parties agree that they will through their representatives support, and will
4 not individually or collectively oppose, action by the Legislature that provides funding and
5 statutory changes that may be necessary to facilitate implementation timing for SMA
6 guidelines consistent with **Attachment B**, which outlines funding, legislative, and related
7 subjects.

8 4.2 The parties hereby agree that certain obligations of this stipulation are contingent
9 upon legislation being adopted that fulfills the basic principles identified in Attachment B,
10 part 2. If legislation is not adopted during the next session that meets these principles, the
11 parties shall meet to determine whether to terminate, amend, or continue this stipulation in
12 light of legislative actions.

13 4.3 Nothing in this stipulation waives any rights that any party or local government
14 may have to bring a legal action claiming that the costs of updating SMA master programs is
15 an unfunded mandate, and specifically this stipulation does not waive any right to assert such
16 claims if Guidelines are adopted but Funding is not provided as contemplated pursuant to
17 Attachment B. Similarly, no other party waives any defenses that they may have if any such
18 claims are ever made.

19 **5. Statement Regarding Ecology Commitments Authority If Jurisdictions Fail to**
20 **Meet Deadlines Set by Legislation for Master Program Update.**

21 Pursuant to RCW 90.58.070(2), the SMA provides “If any local government . . . fails
22 to adopt a master program for the shorelines of the state within its jurisdiction in accordance
23 with the time schedule provided in this chapter, the department shall carry out the requirements
24 of RCW 90.58.080 and adopt a master program for the shorelines of the state within the
25 jurisdiction of the local government.” Based on Attachment B, the parties contemplate that the
26 Legislature will identify deadlines for updating master programs. If a jurisdiction fails to meet

1 the statutory deadline for adopting an update of master program set by legislation, then
2 Ecology shall, within 30 days of such failure, request information from the jurisdiction
3 describing those actions the local jurisdiction will take to develop a revised shoreline master
4 program consistent with the revised guidelines, and the anticipated schedule for adoption.
5 Ecology shall allow the local jurisdiction 30 days to respond to this request. Then, within 30
6 days following the deadline for the local jurisdiction's response or the local jurisdictions lack
7 of timely response, Ecology shall determine whether the local jurisdiction is likely to adopt an
8 updated shoreline master program within one year of its statutory deadline. If Ecology
9 determines that the local jurisdiction is not likely to adopt an updated shoreline master program
10 within one year after its statutory deadline, then Ecology shall, pursuant to its authority under
11 RCW 90.58.070(2) and subject to all applicable laws, adopt an interim shoreline master
12 program within a year of Ecology's determination. Ecology shall work in good faith to fulfill
13 its commitments to implement RCW 98.58.070(2) by proposing rules that would adopt these
14 commitments on a schedule coordinated with proposal and adoption of guidelines. The parties,
15 however, do not intend Ecology's commitments in this paragraph to be contingent on
16 rulemaking. If Ecology determines that the local jurisdiction is likely to adopt its update within
17 1 year of its statutory deadline but the local jurisdiction then fails to adopt, then Ecology shall
18 commence rulemaking for an interim shoreline master program for that local jurisdiction to be
19 completed within a year or less. In the event that a party to this stipulation contends that
20 Ecology is failing to act consistent with law, the party may seek judicial review of Ecology's
21 response plans or actions to the extent authorized by law, which may include seeking judicial
22 review under RCW 34.05.570(4).

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1 The above is stipulated to this 20th day of December, 2002 and this stipulation may be
2 filed in the above captioned case.

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6 Friends of the San Juans, Hood Canal Environmental Council, Kettle Range Conservation
7 Group, Kittitas Audubon Society, People for Puget Sound, Save a Valuable Environment,
8 Washington Conservation Voters - Island County Chapter, Washington Public Interest
9 Research Group, Wildlife Forever of Grays Harbor, Chris Brown, Fred Ellis, Benella Caminiti,
10 League of Women Voters of Washington, Black Hills Audubon Society, and National
11 Audubon Society.

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